CHAPTER 2

LEGAL ASPECTS OF MILITARY LAW

In civilian life, criminal law seeks to protect society from the ravages of its irresponsible members. It seeks to provide this protection without hasty, ill-considered actions that show prejudice toward any person's fundamental rights. However, military law must not only restrain individuals for the protection of military society but also be an instrument that encourages teamwork and morale. For these reasons, certain acts that are considered inalienable rights in civilian society are offenses in military society. For instance, "telling off the boss" is a right of an American civilian; but in the military service, it may well constitute an offense punishable by court-martial.

Military law also promotes discipline in the Armed Forces. Discipline is that attribute of a military organization that enables it to function in a coordinated manner under different circumstances. Many factors contribute to the building of a well-disciplined organization. One of the more important factors is military law.

Traditional military law has always applied standards of behavior to the Armed Forces that were different and more strict than those applied to civilians. However, the role of the military in protecting our nation justifies the requirement for strict standards of behavior. With that in mind, Congress established a system of military justice for all members of the armed forces. This system is the Uniform Code of Military Justice (UCMJ).

A court-martial has jurisdiction over those offenses described in the UCMJ's punitive articles, Articles 77-134. Many of these articles describe conduct that is purely military in nature, such as unauthorized absence and misbehavior of a sentinel. However, many of the other articles define offenses that are also prohibited in any society, such as murder, theft, and rape.

You are responsible for keeping your knowledge of military law up-to-date; as an MA, you must be thoroughly familiar with the essentials of military law. Now let's look more at the concept of jurisdiction in military law,

JURISDICTION

LEARNING OBJECTIVES: Identify and explain two sources of jurisdiction. Describe jurisdiction over the person, the offense, and the location or place.

All personnel performing law enforcement work for the Navy in the continental United States or overseas need a basic understanding of the legal concepts of *jurisdiction* and *authority* to *apprehend.* Both of these areas are complex legal subjects, susceptible to change by legislation or court decision. Personnel with specific legal and policy questions should be referred to the local staff judge advocate for guidance and resolution.

Jurisdiction is defined in the judicial sense as the power of a court, military or civilian, to consider a controversy and render a valid judgment. To have such power, a court must have jurisdiction over several areas. But first, let's look at the sources of law that govern jurisdiction.

SOURCES OF JURISDICTION

The sources of federal court jurisdiction are the Constitution of the United States and various federal statutes.

The Constitution

The power of a court-martial to try service persons is contained in Article I, Section 8 of the Constitution, which gives Congress authority to make rules and regulations for the Armed Forces. Article II of the Constitution makes the President of the United States the Commander in Chief of the Armed Forces. The Congress has exercised its rule-making power by enacting the *UCMJ:* Title 10, U.S. Code, Sections 801-940. And the President has exercised his constitutional power by issuing the *Manual for Courts-martial* (MCM). Both the *UCMJ* and the *MCM* discuss and define court-martial jurisdiction.

Federal Statutes

The federal statutes of the United States, as well as the Constitution, are sources of jurisdiction. Article III of the Constitution established the United States Supreme Court and also authorized the Congress, by federal statutes, to establish the lower courts. Magistrate and district courts are established under federal statutes. Military law-enforcement officials will often come into contact with civilian violators of federal law. Now let's look at jurisdiction over the person, the offense, and the location or place.

JURISDICTION OVER THE PERSON

To try a person, a court must have authority "over his person." Courts-martial normally have no authority, or power, over civilians. Thus a court-martial could not try a civilian, even though his or her conduct might have been criminal and directly detrimental to the military.

JURISDICTION OVER THE OFFENSE

To try a person for an offense, a court must have jurisdiction over the offense. All courts are limited in the classes of offenses that they may hear and decide. For example, a federal or state civilian court has no authority to try a military person for unauthorized absence from his or her unit. That offense, punishable under Article 86 of the *UCMJ,* can only be adjudicated by the military.

JURISDICTION OVER LOCATION OR PLACE

The jurisdiction of the courts is also limited by the location or place of the offense. For example, the courts of New York State have no jurisdiction to consider cases involving criminal conduct in the state of Florida. Similarly, the United States federal civilian courts have no jurisdiction, generally, to try American citizens for offenses committed in another country. Nevertheless, under Article 5 of the *UCMJ,* a court-martial has jurisdiction to try military personnel for service-connected offenses occurring in "all places."

TYPES OF JURISDICTION

LEARNING OBJECTIVES: Explain military and civilian jurisdiction and how the service connection issue relates to jurisdiction. Describe jurisdiction as it relates to federal offenses, Explain investigative jurisdiction and how the Federal Assimilative Crimes Act affects jurisdiction. Define territorial, maritime waterway, and security zone jurisdiction, Explain the *Posse Comitatus Act.*

As an MA, you must be concerned with the various types of jurisdiction. To begin with, jurisdiction deals with the type of offense, where it was committed, and by whom it was committed. Many other factors also govern jurisdiction, as you will see in the following discussion.

MILITARY JURISDICTION

Courts-martial have jurisdiction to try only certain specific classes of personnel as delineated in Article 2 of the *UCMJ.* The following describes these classes:

Service members on active duty. Article 2(1) of the *UCMJ* identifies certain active-duty personnel as subject to its jurisdiction.

- Reserve members attending drill. Reservists on inactive duty training, usually weekend drills, are subject to *UCMJ* jurisdiction during drill periods if the orders assigning them to duty so state. The orders of reservists in some branches of the service do not state that the drilling reservist is subject to *UCMJ* jurisdiction. Specific situations should be referred to a local JAG officer.

- Retired persons. Retired members of a Regular component of the armed forces who are entitled to pay, retired members of the Reserves who are hospitalized by the service, and members of the Fleet Reserve or the Marine Corps Reserve are all subject to *UCMJ.* This rule continues military jurisdiction over specified categories of retired service members who retain financial or other ties to the armed forces.

CIVILIAN JURISDICTION

The Supreme Court has ruled that civilians are not under court-martial jurisdiction in peacetime despite *UCMJ,* Article 2(11). That article provides for jurisdiction over "persons serving with, employed by, or accompanying the armed forces outside the United

States." Our Government has allowed the trial of civilians under military jurisdiction in time of war. However, the United States Court of Military Appeals has interpreted the term *war* to include only a war declared by Congress.

SERVICE-CONNECTION ISSUE

Law-enforcement personnel may encounter some offenses that are not purely military crimes. When that happens, they must evaluate the offense to show a connection between the crime and the military service. If they find no "service-connection," the military has no jurisdiction, even if the offender is on active duty in the military. Offenses that are not service connected are legal issues that must be referred to the staff judge advocate on a case-by-case basis. The more closely related the crime is to the base, military authority, or military duties, the more apt the courts are to find it a service-connection issue and thus under military jurisdiction.

This service-connection jurisdiction problem does not exist when the crime is committed aboard ship or overseas. In addition, even if no court-martial jurisdiction exists because of a lack of service connection, the crime may still be under the jurisdiction of nonjudicial punishment or of local, federal, or state civilian courts.

JURISDICTION OVER FEDERAL OFFENSES

Title 18 of the United States Code delineates the majority of federal crimes. These crimes are generally major felonies. They apply to both civilians and military personnel and are prosecuted in the federal district courts. Offenses prohibited involve a wide range of serious activities, such as mail fraud, kidnapping, and theft of U.S. property.

INVESTIGATIVE JURISDICTION

Base commanding officers, in addition to having the duty of maintaining good order and discipline, have the responsibility of ensuring that neither military nor civilian personnel on base violate federal civilian laws. The Secretary of Defense and the U.S. Attorney General recognize that certain offenses against federal civilian law are also violations against military law. They recognize that the military offender should be prosecuted by a military tribunal after the military investigation. They also recognize that other offenses committed by military personnel or civilians should be investigated by other federal agencies and prosecuted in federal criminal courts. The *Manual for Courts-Martial,* appendix 3, details investigative jurisdiction. Now let's look at investigative jurisdiction for major crimes and for minor crimes and traffic offenses.

Major Crimes

The Federal Bureau of Investigation is the chief investigative agency tasked with the enforcement of federal criminal laws. Other agencies, such as the Drug Enforcement Administration and the Treasury Department, have investigative jurisdiction over specific crimes. Incidents of actual, suspected, or alleged major criminal offenses should be referred to the Naval Criminal Investigative Service (NCIS), which will decide whether the case should be referred to outside federal agencies. If the federal agency does not assume investigative jurisdiction, NCIS will, in most instances, conduct the investigation.

Minor Crimes and Traffic Offenses

The majority of naval commands have investigative personnel within their security departments. Such persons are normally limited to investigating minor offenses. Any major criminal offense should be referred immediately to the NCIS. This requirement of referral does not in any way restrict command law enforcement personnel from executing appropriate procedures. Appropriate procedures include preventing the escape or loss of identity of offenders, preserving crime scenes and the integrity of physical evidence, or conducting on-scene inquiries as appropriate.

Minor offenses include most misdemeanors and traffic offenses. Both the commanding officer (if the subject is military) and the U.S. magistrates may dispose of these offenses. If criminal prosecution before a U.S. magistrate is appropriate, it is effected by the issuance of a U.S. magistrate's court violation notice, as set forth in SECNAVINST 5822.1.

ASSIMILATIVE CRIMES ACT

To avoid the task of maintaining a complete code of civilian criminal laws for military bases and other federal property, Congress passed the Assimilative Crimes Act. This statute provides that all acts or omissions occurring in an area under federal jurisdiction that would constitute crimes if the area were under state jurisdiction will constitute the same

crimes, similarly punishable, under federal law. For example, Congress has not enacted a traffic code for military bases. However, speeding on a naval base could be a federal traffic violation, because military bases adopt for federal use the traffic laws of the state in which they are located.

TERRITORIAL JURISDICTION

Military reservations generally are categorized as having either exclusive federal jurisdiction or concurrent federal jurisdiction. The federal government may also hold territory in a status of proprietorial interest. Jurisdiction in this context refers to the authority to enact and enforce general criminal laws within a given area. Two or three types of jurisdiction may exist within the same installation. Because parts of a base might have been acquired at different times in different ways, one portion might be under exclusive jurisdiction and the next under concurrent. Law enforcement personnel should consult with their local staff judge advocate concerning the jurisdictional status of all portions of their base. Now let's look at exclusive, concurrent, and proprietary jurisdiction.

Exclusive Federal Jurisdiction

Only the federal government has the power to make and enforce federal laws. Federal laws are enforced through various agencies, including the military. Thus, exclusive federal jurisdiction applies only to areas governed by the specific federal criminal statutes and the statutes of the federal Assimilative Crimes Act. Generally, state laws have neither force nor effect in areas of federal jurisdiction; and local, state, or municipal law enforcement authorities have no authority in such areas.

Concurrent Federal Jurisdiction

Both the federal government and state government (including its county and municipal subdivisions) have authority to make and enforce general municipal laws on the land in question. Thus, a single act could constitute a crime against both the federal and local state law. Both naval authorities and state authorities could, in theory, enforce and prosecute under their respective law. However, they must first seek permission as specified in section 0116 of the *Manual of the Judge Advocate General (JAGMAN).*

Proprietary Jurisdiction

When the federal government has acquired a degree of ownership of a piece of property but has not obtained legislative authority over the area, generally only the state has the power to enforce its laws on the property. The United States has the right, however, as does any landowner or tenant, to protect its property. In addition, state authorities cannot interfere with any valid military activity on such property.

A court-martial has jurisdiction over a military member on active duty no matter where the offense is committed; however, coordination between naval and state/local authorities is always recommended first.

MARITIME WATERWAY AND SECURITY ZONE JURISDICTION

The United States Coast Guard has the ultimate responsibility for law enforcement jurisdiction for intercostal waterways and in security zones. The Coast Guard will board all vessels making an unauthorized entry into any security zone and make any apprehensions required.

Although the Coast Guard is responsible for security on the waterways, commands are not relieved from their primary responsibility for the protection and security of waterfront facilities.

Further guidance can be found in *Combined Federal Regulations* 33, chapter 1, part 6, ("Protection and Security of Vessels, Harbors, and Waterfront Facilities").

POSSE COMITATUS ACT

The *Posse Comitatus Act* provides that the Army and Air Force cannot be used to execute the laws. DOD Directive 5525.5 of 16 Jan 86 and SECNAVINST 5820.7 have applied the same restrictions to the Navy as a matter of DOD and DON policy.

Posse comitatus means the power or force of the county. It authorizes the sheriff to call a posse of citizens to help enforce the law. In the context of this statute and DOD policy, *posse comitatus* generally means that military personnel cannot be used to enforce civilian laws. This law does not prohibit such individuals from making a citizen's arrest for a felony or breach of the peace committed in their presence or from issuing citations for appearance before a U.S. magistrate. It also doesn't prevent them from performing other duties that support the role of the military; for example, protecting government personnel and property.

STATUS OF FORCES AGREEMENTS

LEARNING OBJECTIVES: State the purpose of status of forces agreements. Describe the application of status of forces agreements and the jurisdictional arrangements. Explain fairness of jurisdiction and the importance of status of forces agreements.

The development of collective defense in peacetime requires that forces of various countries form an integrated force for their common defense. This development requires that these forces be stationed in the territory of another treaty country. It also requires that they be free to move from one country to another to comply with the demands of strategy. It is essential, therefore, to have uniform arrangements and procedures governing the status of such forces and their relationship to the civilian authorities in countries other than their own.

The purpose of status of forces agreements is to define the status of the forces of one country when stationed in the territory of another. Status of forces agreements, accordingly, undertake to regulate this relationship in two ways:

1. Guaranteeing the armed forces adequate legal protection without, at the same time, infringing on the authority of the military command
2. Recognizing fully the peacetime rights and responsibilities of the civilian authorities in the host countries

APPLICATION OF STATUS OF FORCES AGREEMENTS

The status of forces agreements apply to personnel belonging to the land, sea, and air armed services, as well as to civilian personnel accompanying a force. Article II of the NATO Status of Forces Agreement, for example, sets forth the basic principle to be observed by any force in a country other than its own:

> It is the duty of a force and its civilian component and the members thereof as well as their dependents to respect the law of the receiving State, and to abstain from any activity inconsistent with the spirit of the present Agreement, and in particular, from any political activity in the receiving State. It is also the duty of the sending State to take necessary measures to that end.

JURISDICTIONAL ARRANGEMENTS

The jurisdictional arrangements of the status of forces agreements are important in terms of fairness of trial. When we object to trial of United States personnel in foreign courts, we do so for a particular reason: We feel that a member of our forces, tried in a foreign court under a different legal system and in a language he or she does not understand, may not receive a fair trial.

FAIRNESS OF JURISDICTION

In considering the question of fairness, two basic points must be observed. First, the effect of a status of forces agreement is not to grant jurisdiction to foreign courts over American defendants when those courts would not otherwise have jurisdiction in the case. On the contrary, the agreement gives the United States the primary right to exercise concurrent jurisdiction in some cases. In other cases of concurrent jurisdiction, the agreement expressly provides mechanics for, and thereby encourages, foreign courts to waiver jurisdiction over offenses that would otherwise be triable before them. If it were not for the status of forces agreements, many more service members would be tried by foreign courts. And though we may not always agree with foreign criminal procedures, our service members are afforded much more protection than they would otherwise receive if the status of forces agreements did not exist.

Secondly, since there is a yielding of jurisdiction to our military courts by the other parties to the status of forces agreements, we cannot expect that the American defendants who are tried by foreign courts to be tried under our own country's criminal procedure. Further, we cannot expect to obtain agreements that grant substantial concessions for criminal jurisdiction by a foreign country to also guarantee procedural safeguards in its courts beyond those available to its own citizens.

Military commanders of overseas commands have reported that the jurisdictional arrangements in the countries under their responsibility have worked well in practice. They have also reported that these arrangements have had no adverse effect upon the military mission of the Armed Forces or the morale and discipline of its members.

IMPORTANCE OF STATUS OF FORCES AGREEMENTS

From the foregoing discussion of the status of forces agreements, each MA assigned to duty overseas

should realize the need to develop a working knowledge of its provisions. You must remember at all times that you are a guest in a foreign country and are subject to that country's laws and procedures. Remember also that whatever privileges you possess, as compared with the ordinary visitor or tourist in that country, you possess only by the special consent of the host country. Only by giving thought to your mission as a member of the military forces of the United States will you understand why the host country extends certain privileges to you. In most countries, those privileges permit you to do the following:

- Use your United States driver's permit as authorization to drive
- Take household goods and personal belongings, including your car, into the country without paying any customs duty or taxes
- Enter and leave the country on military orders alone, without a passport or visa
- Spend money freely in the foreign country without paying foreign taxes on property and salary

Lastly, remember that as a guest in a foreign country, you are subject to that country's criminal laws and procedures. If you break any of these laws, you may find yourself on trial before a foreign court. Only by the consent of the host country can you be tried by the courts of your own service for offenses committed on foreign soil. Trial by the courts of your own service is not a matter of absolute right, but a privilege embodied in status of forces agreements.

Military Requirements for Senior and Master CPO, NAVEDTRA 12048, illustrates the general form and scope of the many agreements of the NATO status of forces agreements.

APPREHENSION AND RESTRAINT

LEARNING OBJECTIVES: Explain the UCMJ articles that apply to apprehension and restraint. Define apprehension. Describe apprehension as it relates to approach, evaluation, and taking into custody.

Because Masters-at-Arms make a large percentage of all apprehensions in the Navy, you should clearly understand the legal meanings of the word apprehension and other terms such as arrest, custody, *confinement,* and *restraint.* The authority of Navy law enforcement personnel to enforce military law, orders, and regulations is derived from Title 10, U.S. Code 807, and *Manual for Courts-Martial (MCM),* Rule 302.

UCMJ ARTICLES

As a preface to this section, applicable Articles 7 through 14 of the *UCMJ* are quoted verbatim and are followed in some cases by clarifying explanations that point out legal considerations not always obvious in the quoted article.

Within the quoted material of this section, you will see a reference to persons "subject to this chapter." "Chapter" refers to the chapter of the *MCM* that contains the articles of the *UCMJ* under discussion, not to this chapter of the training manual.

Articles 7 through 14 directly concern MAs because they are the basis of "the law" as it relates to taking persons into custody, methods of restraint, and authority to order persons into arrest or confinement.

Article 7—Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell quarrels, frays, and disorders among persons subject to this chapter, and to apprehend persons subject to this chapter who take part therein.

Section (a) defines apprehension as taking a person into custody. As you will see later, a person is placed under arrest only on the order of an officer. As a practical matter, the fact that you say, "I'm placing you under arrest" instead of "I'm apprehending you" makes no legal difference. The important point is that the offender must be informed clearly that he or she is being taken into custody. The offender won't know unless told. The *MCM* defines custody in part as "restraint of free locomotion, which is imposed by

lawful apprehension." To make the custody clear, you should normally use some indication of physical restraint, such as taking the offender by the arm. This procedure is not always wise, of course, especially if the offender is argumentative or drunk. Use good judgment when using physical restraint. Remember that the purpose of taking a person into custody is only to restrain the violator until proper authority can be notified.

The *MCM* clarifies the words in section (b) "authorized under regulations governing the armed forces . . . " to include all petty officers. The important point here is the "reasonable belief." The initial action of apprehending a person is legally sufficient if a reasonable belief exists that the person has committed an offense. Legal proof is seldom available at this stage unless you actually see the violation take place.

Although section (b) uses the words "reasonable belief to justify apprehension, section (c) has no restriction whatever. By virtue of your rating badge, you have the authority to take into custody persons involved not only in a fight, but in a quarrel (angry dispute) as well. The idea, of course, is to stop the quarrel before it develops into a brawl. But sometimes the only way to stop it is to take the individuals into custody, and Article 7 gives you this authority.

Article 7 includes taking custody of any U.S. service member, Navy or otherwise.

Article 8—Apprehension of Deserters

> Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of these forces.

Generally speaking, a civilian has no authority to apprehend a suspected deserter. Usually the civilian notifies a civil or military authority about suspicions of desertion. However, once the military sends out a formal declaration that a person is a deserter and offers a reward for picking the deserter up, a private citizen has sufficient authority to apprehend. Even if a civilian apprehends and delivers a deserter without authority, that deserter will be held for trial. A deserter may be apprehended by anyone-the FBI, military police, civil police, and private citizens.

Article 9—Imposition of Restraint

> (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.
>
> (b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.
>
> (c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.
>
> (d) No person may be ordered into arrest or confinement except for probable cause.
>
> (e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Congress has given the terms apprehension, arrest, and confinement distinct meanings. Apprehension, as you learned from Article 7, is the initial act of taking a person into custody. Once a person is taken into custody, that person may be held under restraint for safekeeping while the charges are disposed of, There are three forms of such restraint. The most severe is confinement—the physical restraint of a person. Next comes arrest, which is the restraint of a person by an order directing him or her to remain within certain specified limits. The least severe form of restraint for safekeeping is restriction in lieu of arrest, which is also imposed by an order directing the person to remain within certain specified limits. The difference between arrest and restriction in lieu of arrest is that a restricted person performs all regular duties, whereas a person under arrest does not perform

full military duties. For this reason, personnel who commit relatively minor offenses are normally put under restriction in lieu of arrest.

Confinement, arrest, and restriction in lieu of arrest, when imposed under Article 9, are not forms of punishment. Arrest and restriction in lieu of arrest are similar in one respect: the party is required to stay within specified limits. It is a person's conscience and the force of law, rather than a strong arm or a barred door, that induce an individual to remain within those limits. A person obeys because of a moral and legal obligation to do so.

Confinement before trial is usually not imposed. However, it is imposed if needed to ensure the presence of the accused at the trial, if the offense charged is extremely serious, or if the safety of the public or the accused is in jeopardy.

Article 10—Restraint of Persons Charged With Offenses

> Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

This article, requiring "immediate steps" to try the accused, is strengthened by Article 98, which makes punishable by court-martial any unnecessary delay in the disposition of a case. However, undue haste also is frowned upon. In time of peace no person may, against his or her objection, be brought to trial before a general court-martial within 5 days after being served charges or before a special court-martial within 3 days after being served charges (Article 35).

The *MCM* amplifies this article by permitting an authorized arresting officer merely to restrict an accused person to specified areas of the military command (restriction in lieu of arrest). (See discussion under Article 9.)

Article 11—Reports and Receiving of Prisoners

> (a) No provost marshal, commander of a guard, or master-at-arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.
>
> (b) Every commander of a guard or master-at-arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

An arrest is imposed by notifying the person to be arrested that he or she is under arrest and informing that person of the limits of the arrest. The order to arrest may be oral or written. A person to be confined is placed under guard and taken to the place of confinement.

Article 12—Confinement With Enemy Prisoners Prohibited

> No member of the armed forces maybe placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

However, members of the Armed Forces may be confined in the same jails, prisons, or other confinement facilities with the categories mentioned above if they are separated from them.

Article 13—Punishment Prohibited Before Trial

> Subject to section 857 of this title (Article 57), no person, while being held for trial or as the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances required to ensure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

The minor punishment permitted under Article 13 includes that authorized for violations of discipline required by the place of confinement. The article does not prevent a person from being required to do ordinary cleaning or policing or from taking part in routine training and duties not involving the bearing of arms.

Article 14—Delivery of Offenders to Civil Authorities

> (a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.
>
> (b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

APPREHENSION

Apprehension is the military equivalent of the civilian term *arrest*. Any officer, warrant officer, noncommissioned officer, or other person designated by proper authority to perform guard, police, or criminal investigation duties may apprehend a violator.

Custody means restraint of free movement. When an individual is taken into custody, the individual's movements are controlled by the person or persons who made the apprehension.

Physical restraint is the loss of free movement that results from being taken into custody. It may involve force or maybe accomplished by obedience to orders. Even if force is not used, a Master-at-Arms must be able to apply force if needed to effect an apprehension; that is, the MA must be able to restrain forcibly an offender who resists apprehension. The use of force depends on whether or not the offender submits to the apprehension.

The procedure for apprehending depends upon its necessity, the manner in which an offender is approached, an evaluation of the facts and circumstances, and the manner in which custody is imposed. Although no formal procedure can apply in all cases, the following information emphasizes what a Master-at-Arms should consider.

WHEN TO APPREHEND

Apprehension is made only for probable cause. If facts and circumstances indicate that a person has committed an offense, then an apprehension may be justified. All offenses, however, do not require apprehension. A minor offense or traffic violation may require only an on-the-spot correction, an incident report, or a traffic citation. When to apprehend depends on the facts and circumstances of the offense and your judgment and experience. No two offenders are identical. Officers should not be apprehended except on the orders of another officer or because of the seriousness of the offense.

Two-person Approach

Masters-at-Arms usually work in pairs to assist each other when the occasion requires. In an apprehension involving force, the advantage of two persons is clear.

When approaching an offender, the senior MA takes a position to the right front of the offender. This approach provides a defense against a direct frontal attack and allows for restraining action. The second MA takes a position to the left rear of the offender, ready to assist if necessary. The senior MA does all questioning and checking of identification. If the offender is against a wall, the MAs form a V to the left and right front of the offender. This approach allows them to protect themselves and overcome any resistance.

Politeness pays off in a smooth apprehension, a minimum use of force, better public relations, and increased respect for law enforcement. A smooth, courteous, and efficient approach and a firm but friendly conversational tone usually calm all but the most violent offenders.

Evaluation

In deciding whether to apprehend a suspect, the Master-at-Arms must make an evaluation of the person. The MA must evaluate the suspect's attitude, possible injuries the suspect might have received, and any indication of a probable cause to apprehend.

A suspect is either cooperative or uncooperative. An uncooperative attitude is a good indication that an apprehension is necessary and force may be required. A cooperative attitude, in itself, does not always indicate innocence. Experienced offenders sometimes appear to be model sailors.

Always check a suspect for any injuries that require medical attention. That is particularly important when the suspect has been in a fight or is intoxicated. A seemingly minor injury could be serious, and the few minutes required for medical attention may clear you of negligence.

Considering all the circumstances, the senior MA will decide whether probable cause exists to make an apprehension. Since an apprehension is not a trial, a reasonable belief that the person has committed an offense is sufficient grounds to support an apprehension. Proof beyond a reasonable doubt is NOT required at this point. If the apprehension has been ordered by higher authority, no further decision is necessary. Once decided upon, an apprehension should be made quickly, without hesitation or argument. The objective is to remove the suspect from the scene with minimum delay.

Taking Into Custody

An apprehension is effected when the suspect is told that he or she is being taken into custody. A simple statement such as "You're under apprehension" or "I'm taking you into custody" is sufficient. The suspect should not have any doubts about his or her status.

Immediately upon apprehension, search the suspect for weapons. You may simply frisk the suspect or, if warranted, thoroughly search both the suspect and the area under the suspect's immediate control. As the apprehending officer, you may search for weapons to ensure your own safety or search for tools that might enable the suspect to escape. You need not search every area in a room in which a suspect is apprehended; instead, search only that area of the room under the suspect's immediate control. Thus, the scope of the search depends on the circumstances involved in the apprehension.

If circumstances allow, warn a suspect of his or her right against self-incrimination in accordance with Article 31, *UCMJ*. Although formal interrogations are rarely made at the scene of an apprehension, any confession or admission obtained from the suspect at the scene is inadmissible in court unless the suspect is first warned of his or her rights under Article 31, *UCMJ*.

CITIZEN'S RIGHT TO ARREST

LEARNING OBJECTIVES: Explain the citizen's right to arrest. Describe personal liability when making a citizen's arrest, and identify the two defenses that are available if an MA is brought to trial.

All members of the Navy have the ordinary right of civilians to assist in maintaining peace. Generally, this right means members of the Navy (including MAs) have the authority to apprehend any person who commits a felony or who in their presence commits a misdemeanor amounting to a breach of the peace.

PERMISSION TO APPREHEND

Since the law of apprehension varies considerably in different localities, an MA ordinarily apprehends under this right only with the permission of the commanding officer. Apprehension that involves the removal of a person from an area of military jurisdiction and an order not to reenter also requires the permission of the commanding officer. This type of apprehension normally occurs when a person not subject to military law is found in an area of military jurisdiction in the act of committing a violation not amounting to a felony or a breach of the peace.

PERSONAL LIABILITY DEFENSES

When actions for damages or criminal proceedings occur, the acts of Masters-at-Arms in aiding civil authorities to suppress domestic violence are subject to review by military and civil courts. An MA brought to trial for acts done while assisting civil authorities under circumstances authorized by constitutional or statutory provisions has two defenses for personal liability: military necessity and superior orders.

Military Necessity

The defense of military necessity is generally available to the officer in charge of the operation and to the Master-at-Arms. If the officer (or MA) can show that the action appeared to be necessary at the time because of the emergency, he or she is freed from guilt. If hindsight shows that better methods were available,

the officer (or MA) may still be absolved of legal responsibility.

Superior Orders

The defense of superior orders is ordinarily available to all military personnel who act under the order of a military superior. Under circumstances calling for prompt action, the Master-at-Arms cooperates with civil authority but is subject only to the authority of military superiors. The defense of superior orders is available unless an order is so obviously illegal that any person of ordinary understanding would instantly perceive it to be so. If the commands are illegal but not obviously so, the Master-at-Arms is not held liable if he or she obeys.

CONSTITUTIONAL CONSIDERATIONS

LEARNING OBJECTIVES: Describe and compare the fifth amendment to the Constitution with UCMJ, Article 31. Explain the preinterrogation warnings and the purpose of each part of Article 31.

The fifth amendment to the Constitution states, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." This provision of the Constitution is fundamental to the American legal system and to a democratic way of life.

Article 31 of the *UCMJ* is a statutory enactment of judicial interpretations of the fifth amendment protection against compulsory self-incrimination. Like all statutes, it is of a lesser importance than the constitutional provision. It is, however, broader than the constitutional guarantee and will, therefore, be used as a basis for discussing the rights of persons subjected to interrogation.

PREINTERROGATION WARNINGS

Before an individual can be questioned concerning an alleged crime that the individual is suspected of having committed, that person's rights as afforded by the Constitution must be explained. This explanation of the individual's rights is called a preinterrogation warning. To help you understand more of what is involved in this warning, we will look at what is required by the fifth amendment, how Article 31 of the *UCMJ* incorporates the fifth amendment, and what procedures must be followed to properly administer a warning under Article 31, *UCMJ*.

FIFTH AMENDMENT RIGHTS

The fifth amendment to the U.S. Constitution provides, among other things, that no person "shall be compelled in any criminal case to be a witness against himself." The sixth amendment requires that the accused in a criminal case "be informed of the nature . . . of the accusation" and that he have the "assistance of Counsel for his defense." In passing the *UCMJ,* Congress enacted the spirit of the fifth amendment in Article 31. Much later, the Court of Military Appeals made a ruling that applied to the military. This ruling, based on a decision of the Supreme Court, made sure that if an accused person is interrogated in custody and the interrogator plans to use accused's statements in evidence, the accused has not only the right to have the assistance of counsel, but must be advised of this right before any interrogation. Since you will be dealing with persons suspected of offenses, you will be interested primarily with real-world ramifications of these rights. When and by whom must a suspect be warned? What constitutes a valid warning? What are the consequences of a failure to warn?

ARTICLE 31

Article 31 is divided into four subsections, the first three of which regulate the activities of individuals who question or interrogate others. The fourth subsection prohibits the receipt into evidence of any statement taken from an accused in violation of the first three subsections.

Article 31a

"No person subject to this chapter may compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him." Compulsion and self-incrimination are the keys to understanding this subsection. Evidence is incriminating if it tends to establish guilt; interrogation is improper under Article 31 a if it compels the person being questioned to give responses that tend to establish his or her guilt. Notice that the article deals with "person(s)," not just suspects. The privilege against self-incrimination applies to both accused persons and to witnesses. The type of compulsion contemplated could involve an in-court

situation in which either a witness or the accused is required to answer questions.

In court, the accused has an absolute right not to take the stand and testify. An accused who chooses to take the stand to testify on any or all charges may be compelled to answer any questions concerning the charge or charges about which he or she testifies, even though the answer would be incriminating.

The accused may, however, take the stand and limit testimony to a collateral issue. The accused retains the privilege against self-incrimination about all other issues.

On the other hand, a witness maybe compelled to come to court, to take the stand, and to testify. The witness, however, may not be compelled to say anything self-incriminating.

The witness's privilege against self-incrimination is personal; the witness must assert that privilege personally. When the witness asserts that privilege, the ruling officer, usually the military judge, will decide if the answer will, in fact, incriminate the witness. A ruling officer who decides that it will not incriminate the witness will direct the witness to answer. If the determination of the ruling officer is incorrect, the answer cannot later be used in a trial against the witness, as the answer will have been compelled in violation of Article 31a.

Article 31b

Article 31b imposes the following three requirements:

> (1) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation, (2) advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and, (3) that any statement made by him may be used against him in a trial by court-martial.

This is the subsection of Article 31 that will be most significant to you. As a Master-at-Arms, you will be intimately involved in interrogations and interviews with suspects. You must understand and comply with Article 3 lb to ensure the admissibility of any statement elicited.

Article 31c

> No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

This subsection is an enactment of a rule of evidence that precludes admission of immaterial or irrelevant evidence. The witness may be compelled to answer, no matter how degrading the answer may be, if the court determines the evidence to be material to the issue.

Article 31d

> No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

This subsection is the teeth of Article 31. In general terms, it provides that evidence or statements obtained without affirmative compliance with Article 31 by the interrogator are inadmissible in a court-martial. A few examples are necessary to define the scope of unlawful influence and inducement:

- The interrogator tells the accused that if he or she doesn't make a statement, the interrogator will see that the accused's wife is arrested. Violation of Article 31.

- The interrogator tells the accused that if he or she makes a statement, the interrogator will see to it that the case will be handled in juvenile court and will not affect the accused's service. Violation of Article31.

- The interrogator questions the accused for 12 hours straight. During that time, the interrogator makes the accused sit at attention, doesn't allow the accused to eat or smoke, and doesn't allow head calls.

A failure to comply with Article 31 does not necessarily mean that a guilty person goes free. Enough independent evidence may still exist to convict the person. At the very least, however, it does mean that the business of prosecuting charges will be needlessly complicated. A little experience will convince you that giving the required warnings is much easier than attempting to develop enough independent evidence for a conviction several years after the fact. It is easier even though such warnings

could make the interrogation more difficult. NOTE: IF IN DOUBT, WARN!

PROCEDURES FOR ADMINISTERING A WARNING

LEARNING OBJECTIVES: Identify who must be warned and who must give the warnings, and explain when the warnings must be given. Explain a cleansing warning and when acts are considered statements. Describe right to counsel, custodial interrogation, and scope of the right to counsel. Explain how to give the warnings under Article 31b.

As an MA, you will be required to administer Article 31, *UCMJ,* warnings to individuals who are either suspected of or accused of committing an offense under the *UCMJ*. The following discussions should help you become familiar with who can give the warning, when to give the warning, to whom the warning should be given, and how the warning should be given. Additionally, you should become familiar with the accused's right to counsel in connection with this warning.

WHO MUST BE WARNED?

Article 31b may be misinterpreted to mean that this subsection is applicable only to persons accused or suspected of an offense. If an individual is to be questioned merely as a witness, the individual need not be warned. However, if an interview of a witness clearly reveals that the witness may have committed a crime, the individual must be warned before continued interrogation.

WHO MUST GIVE THE WARNING?

Article 3 lb may also be misinterpreted to mean that only the persons subject to the *UCMJ* are required to give the warning. Persons not subject to the Code but employed by the Armed Forces for law enforcement or investigative purposes must give the warning. That includes Naval Criminal Investigative Service (NCIS) agents, security personnel agents, and their counterparts in other services. Persons acting on the request of the military in furtherance of a military investigation also must give warning.

WHEN MUST THE WARNINGS BE GIVEN?

Before ANY question may be asked of an accused or a suspect, warnings must be given. Warnings given after questioning will not meet the criteria set in Article 31 and will not correct any error that prevented the use of statements made before the warning was given. If during questioning of a witness the interrogator suspects that the witness has committed some offense, the interrogator must give the warning as soon as he or she suspects the person's guilt.

CLEANSING WARNING

When an interrogator obtains a confession or admission without proper warning, subsequent compliance with Article 31 will not automatically make later statements admissible. That is best illustrated with the following example:

Assume the accused or suspect initially makes a confession or admission without proper warnings. That is called an involuntary statement and, because of the deficient warning, the statement is inadmissible at a court-martial. Next, assume the accused or suspect is later properly advised and then makes a second statement identical (or otherwise) to the first involuntary statement. Before the second statement can be admitted, the trial counsel must make a clear showing to the court that the second statement was both voluntary and independent of the first involuntary, statement. There must be some indication that the second statement was not made only because the person felt the government already knew about the first confession and, therefore, he or she had nothing to lose by confessing again.

The Court of Military Appeals has sanctioned a procedure to be followed when a statement has been improperly obtained from an accused or suspect. In this situation, rewarn the accused giving all the warnings mandated. In addition, include a cleansing warning to this effect:

> You are advised that the statement you made on _____ cannot and will not be used against you in a subsequent trial by court-martial.

The use of those exact words is not required. However, the trial counsel needs to use a cleansing warning of this type to clearly show that the second statement was not obtained from the first statement. Therefore, it is recommended that cleansing warnings be given when necessary.

Another problem in this area concerns the suspect who has committed several crimes. Suppose the interrogator knows of only one of these crimes and properly advises the suspect about the known offense. During the interrogation, the suspect relates the circumstances surrounding desertion, the offense about which the interrogator has warned the accused. During questioning,

however, the suspect tells the interrogator that while in a desertion status, he or she stole a military vehicle. Immediately upon learning about the additional offense, the interrogator must advise the suspect of his or her rights involving that offense. Only after that has been done may the interrogator begin interrogating the suspect about the additional crime.

If the interrogator does not follow this procedure, statements about the desertion may be admissible, but statements on the theft of the military vehicle probably will be excluded.

ACTS AS STATEMENTS

When an interrogator obtains a confession or admission, some acts, not usually thought of as statements, fall within the privilege against self-incrimination. When one of these acts is requested from an accused or suspect, Article 31 warnings must be given. The following is a selected list of protected acts:

- Asking an accused or suspect an incriminating question. But asking questions to establish identity, such as name, rank, address, or service number, are authorized.

- Requesting an accused or suspect to perform an act requiring conscious mental cooperation. "Verbal acts" or acts that amount to a statement-for example, having an individual identify property by pointing to it—also fall within the prohibited area. Acts that do not require cooperation and that are not protected under Article 31 include fingerprinting, placing a foot in a cast, trying on clothing, exhibition of the body, and physical examination by a licensed physician.

- Requiring an accused or suspect to submit to degrading acts or acts that shock the conscience, For example, the use of a stomach pump to obtain stomach contents or the use of a catheter to obtain urine is a violation of the due process of law because of the degrading nature of such acts. The extraction of blood is not considered degrading and is permitted under certain specific conditions.

RIGHT TO COUNSEL

Supreme Court decisions interpreting the sixth amendment have held that an accused who is in custody and who is to be interrogated has the right to counsel, and further, the right to be advised of his or her right to counsel. The Court of Military Appeals has held this rule to be applicable to military custodial interrogation *(U.S. v. Tempia,* 16 USCMA 629, 37 CMR 249 [1967]). Failure to advise the accused of the right to counsel or failure to provide counsel as requested will trigger an exclusionary rule similar to that contained in Article 31d. Evidence obtained at an interrogation in the absence of the *Tempia* warnings will be inadmissible at a trial by court-martial. Now let us consider two remaining points: custodial interrogation and scope of the right to counsel.

Custodial Interrogation

Custody does not depend on execution of any technicalities of placing a suspect under arrest. Rather, a suspect is considered to have been taken into custody if he or she has been deprived of freedom of action in any significant way or could reasonably believe he or she is in custody. Two examples will highlight the broad definition of the concept:

- Seaman Door is suspected by the CO of possessing marijuana. The CO directs Door to report to NCIS for questioning. Upon arrival at NCIS, Seaman Door, for the purposes of counsel warning requirements, is in custody.

- Airman Frost is seen downtown by the division officer, who is aware that Frost had been restricted last week by the CO for 30 days. The division officer stops Frost. Frost is in custody.

As a general rule, advice to the accused of the right to counsel is required whenever an Article 31 warning is required. The major exception to this rule is that the accused has no right to counsel at an Article 15 hearing (as opposed to a preheating interrogation). But the accused must be advised of the right to consult with independent counsel before making a decision concerning acceptance/rejection of nonjudicial punishment (NJP). Note, however, that no statement made at NJP in the absence of warnings as to the right to counsel can be used in a later court-martial proceeding.

Scope of the Right to Counsel

What are the rights to counsel of the accused? In the first place, counsel means a lawyer within the meaning of Article 27, *UCMJ.* The lawyer must be a judge advocate of one of the armed services. The lawyer also must be a graduate of an accredited law school or a member of the bar of a federal court or of the highest court of a state or be a civilian member of the bar of a federal court or of the highest court of a state. Unless the accused waives the right to counsel, a military lawyer will be appointed by military authority without cost to the accused. Alternatively, the accused has the right to retain a civilian counsel of choice at the

accused' sown expense. The accused has the absolute right to consult with counsel before the interrogation and to have counsel present during the interrogation.

An associated right, in itself not technically a part of the sixth amendment right to counsel, is that the accused has the power to end the interrogation at any time for any reason (or for no reason at all). If the accused indicates a desire to end the interview, it must be terminated. Failure to do so makes inadmissible any statement made after the request to terminate.

HOW TO GIVE THE WARNINGS

The foregoing discussions of fifth and sixth amendment rights have indicated that suspects have rights that mere witnesses do not have. Guidelines have been given to help you determine when a witness shifts to the suspect category. The concept of "in custody" has been explained. Now that you know how to fit the person who is being interrogated into the various categories, you are probably interested in a formula that ensures the admission of any evidence produced by an interrogation.

All suspects and accused persons are entitled to warnings flowing from rights guaranteed by both the fifth and sixth amendments. First, you must identify yourself by name and official position. Then, you should make the following statements to ensure that proper warnings have been given:

1. You are suspected of committing the following offense(s): [Describe the offense(s) here.]
2. You have the right to remain silent.
3. Any statement you do make may be used as evidence against you in trial by court-martial.
4. You have the right to obtain and consult with a lawyer, either a civilian lawyer retained by you at your own expense or, if you wish, a military lawyer who will be appointed to act as your counsel without cost.
5. You have the right to have a retained civilian lawyer or an appointed military lawyer present with you during this interview.
6. You have the right to terminate this interview at any time and for any reason.
7. Do you understand?
8. Do you waive your right to counsel?
9. Do you consent to making a statement?

Determining that the accused or suspect fully understands the rights is particularly important because in the absence of understanding, no intelligent choice can be made to exercise or waive the rights. A court may later look not only at the words used in giving the warning, but also at the suspect's age, intelligence, and experience. For example, a suspect who is drunk at the time of his or her apprehension and original warning should be readvised of his or her rights before any subsequent questioning.

An accused will be advised in accordance with the Suspect's Acknowledgement and Waiver of Rights form. The accused will sign the form to indicate that he or she has been advised of his or her rights. The form is then retained in case it becomes necessary to prove in court that the warnings were properly given.

ARTICLE 31b

Remember from our previous discussion under "Constitutional Considerations" that Article 31 b imposes three requirements:

1. That the accused or suspect be informed of the nature of the accusation against him or her.
2. That the accused be told that he or she has the right to remain silent.
3. That the accused be advised that any statement made by him or her may be used as evidence against him or her at a trial by court-martial. The person giving the advice must also make certain that (1) the accused understands this advice and (2) that the accused affirmatively waives his or her rights before any statement is obtained. Accordingly, a proper Article 31 warning must be given.

   For example, the accused is suspected of stealing two wallets containing a total of $30. The Article 31 warning should be phrased as follows:

   Seaman Brush, I advise you that I suspect you of stealing two wallets from the lockers of Seamen Boate and Doe last night. I advise you that you have the right to remain silent and, if you do say anything, what you say may be used against you as evidence in a trial by court-martial. Do you understand? Do you waive your rights and desire to make a statement?

It is NOT sufficient merely to read Article 31 to the accused. Neither is it in compliance with Article 31 to tell the accused that he or she need not "incriminate himself or herself."

If the accused indicates a desire to consult with a lawyer, ask no questions until a lawyer is obtained.

Likewise, if the accused does not wish to be questioned and has no lawyer present, ask no questions. If, after waiving the rights, the accused elects to make a statement or answer questions, the accused must complete and sign the Suspect's Rights and Acknowledgment form at the time the statement is recorded. If at all possible, have a witness present when the accused is informed of his or her rights and when the accused signs the form. If the accused orally waives the rights but refuses to sign the form, you may proceed with questioning. Make a note on the form to the effect that the accused has stated that he or she understands the rights, does not want a lawyer, wants to discuss the offense(s), and refuses to sign the form.

In all cases, complete the form as soon as possible. Make every effort to complete the form before any questioning begins. If you cannot complete the form at once, as in the case of the street interrogation, you may temporarily postpone completion of the form, but keep notes on the circumstances.

PUNITIVE ARTICLES OF UCMJ

LEARNING OBJECTIVES: Identify the punitive articles of the UCMJ. Read and explain each of the punitive articles contained in appendix III of this manual.

Articles 77 through 134 of *UCMJ* are referred to as punitive articles, which as a whole, cover almost any offense or crime that can be committed. Appendix III of this book covers the punitive articles.

You must remember to establish proof that the accused committed the alleged offense. All ELEMENTS of the offense MUST be met before the accused can be charged for violation of the offense.

The *Manual for Courts-Martial* (part IV, "Punitive Articles") contains specific information about each article. You should consult this part of the *MCM* to obtain the proper specifications when writing charges for NJP or courts-martial proceedings.

SUMMARY

In this chapter, we studied the sources for jurisdiction and discussed jurisdiction over the person, offense, and location. Types of jurisdiction, such as military, civilian, investigative, and territorial were covered. This section also included a dialogue on the service-connection issue, the assimilative crimes act, and the *Posse Comitatus Act.* Next we discussed the status of forces agreements as they relate to application, jurisdictional arrangements, fairness, and importance to members of the Navy. Then we defined apprehension and covered articles 7 through 14 of the UCMJ, which are the basis of "the law" as it relates to the authority for different types of custody. The citizen's right to arrest and two defenses against civil liability were covered next. The fifth amendment to the Constitution and *UCMJ* Article 31 were also discussed. The need for detailed procedures to administer and record a warning was included. Finally, the punitive articles, 77 through 134, were pointed out. Remember, the punitive articles are included in this manual as appendix III.